

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.835 of 2017

Date of decision: 13.02.2017

Dharampal

... Appellant

Vs.

Satish Khatana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Bhim Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 21.11.2016 passed by the learned Additional District Judge, Gurgaon, whereby first appeal of the defendants was dismissed, upholding the judgment and decree dated 05.01.2015 of the learned trial Court, decreeing the suit of the plaintiffs-contesting respondents, defendant No.1 has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned first appellate court in para 3 of its impugned judgment, are that plaintiffs filed the suit for permanent and mandatory injunction on the allegations that a colony which is known as Palam Vihar Extension, was carved out in the land comprising in Khasra No. 88/2 min, 21 min, 20, 89/16/1, 88/19, 88/22, 23, 24, 89/15, 88/11, 12/1, 17 and 18 and 93/1, 2/1 situated within the village Chauma, Tehsil and District Gurgaon. Plaintiff No.2 purchased two plots bearing No.65 and 66 situated in the above named colony vide registered sale-deed dated 17.07.1995 from Sh.

C.S.V. Nair etc. Plaintiff No.2 has sold the plot in question bearing Nos.65 and 66 to plaintiff No.1 for a total consideration of Rs.2 lacs. An agreement to sell in this regard was executed by plaintiff No.2 on 12.04.2005 in favour of plaintiff No.1. The entire sale consideration was paid to plaintiff No.2 on execution of agreement. The plaintiff No.2 had executed a registered irrevocable GPA in respect of the plot in question on 18.07.2005 along with affidavit, receipt, possession letter and indemnity bond in favour of plaintiff No.1. Since execution of the agreement dated 12.04.2005, plaintiff was coming in possession of the plots in question and only the formalities regarding execution of formal sale-deed were remaining. Therefore, plaintiff No.1 was sole and absolute owner in exclusive possession of the suit property. On 24.10.2007 at about 11.25 a.m., plaintiff received a telephonic call from one of the local residents of the said colony namely Mr. Raj Singh, who informed the plaintiff that defendant Nos.1 to 4 were conspiring with each other in order to illegally grab the suit property of the plaintiff. On receiving the information, plaintiff reached at the site of the suit property at about 1.00 a.m. and was shocked to see that some construction materials were lying outside the suit property and some labourers were working there and digging the foundation. On being asked, labourers present there informed the plaintiff that they have been employed by Mr. Dharampal, Mukesh Sharma, Anuj Kumar, Adesh Kumar i.e. defendant Nos.1 to 4. Thereafter, plaintiff made a call to the police but the police officials who attended the call refused to come there and asked him to go the local police station. Thereafter, all the laborers left the site and ran away from the site. Upon inquiry, it was found that the gang of above named defendant Nos.1 to 4 were involved in grabbing the property of others illegally by trespassing on the same. The matter was reported to the police and on

30.10.2007, plaintiff and defendant Nos.1 to 4 were called by local police for discussion and mutual settlement. Defendant Nos.1 to 4 threatened the plaintiff of dire consequences, if the plaintiff pursue that complaint further. Even after repeated request of the plaintiff, no action was taken against defendant Nos.1 to 4. Because of this conduct on the part of local police, plaintiff was left no option but to inform the Higher Authorities regarding the land grabbing by the defendant Nos.1 to 4. In this regard, complaint through Email as well as in writing was sent to Director Vigilance Haryana Police, Additional Director Vigilance Haryana Police, Commissioner of Police, Gurgaon, Chief Minister of Haryana as well as Lt. Governor of Haryana, CBI etc. However, no action was taken by any of the authorities against defendant Nos.1 to 4 and they continued to threaten the plaintiff of dire consequences. Due to this act on part of defendant, plaintiff and his family have been living in constant fear to their life and property. The defendants have no right, title or interest in any manner, whatsoever in the suit property and there is eminent threat on the part of defendants to dispossess the plaintiff forcibly and to create third party interest to the suit property. During the proceedings, an application U/o 6 Rule 17 of CPC was filed by the plaintiff for amendment in plaint, which was allowed. In the amended plaint, it was stated that on account of non-granting of interim stay, the defendants illegally encroached upon the plaintiff's land and took possession of the suit property during the pendency of the suit and has raised illegal and unauthorized construction thereon.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to the relief of mandatory injunction as well as permanent injunction as prayed for?
OPP
2. Whether the plaintiffs are entitled to possession of the suit land as prayed for? OPP
3. Whether the plaintiffs are entitled to recovery of damages to the tune of Rs.10,000/- per month w.e.f. November, 2009 till delivery of vacant possession of suit property? OPP
4. Whether the present suit of the plaintiffs is not maintainable? OPD
5. Whether the plaintiffs have not come to the Court with clean hands and have concealed the true and material facts from the Hon'ble Court? OPD
6. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
7. Whether the plaintiff has no locus standi to file the present suit?OPP
8. Whether the suit of the plaintiffs is barred by limitation?
OPD
9. Whether the present suit is bad for non-joinder/misjoinder of necessary parties?OPD
10. Relief.

With a view to substantiate their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have duly proved

their case. Accordingly, the suit was decreed, vide impugned judgment and decree dated 05.01.2015. Two appeals were filed. One appeal was filed by defendants No.1 to 3 and the second appeal No.41 was filed by Mukesh Kumar-defendant No.4. The appeal filed by defendants No.1 to 3 was dismissed, whereas the impugned judgment and decree of the learned trial Court were set aside qua defendant No.4, allowing his appeal. Hence this regular second appeal at the hands of defendant No.1.

Heard learned counsel for the appellant.

Learned counsel for the appellant, while placing reliance on a judgment of the Hon'ble Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and others, 2008 (4) SCC 594**, contends that the learned Courts below have illegally decreed the suit of the plaintiffs-respondents No.1 and 2. He submits that the suit was not maintainable in the present form. Since the plaintiffs were not having clear title qua the suit property, they ought to have filed a suit for declaration with consequential relief of possession and mandatory injunction. Since the learned Courts below have failed to appreciate this material aspect of the matter, while passing the impugned judgments and decrees, the same have resulted in miscarriage of justice, which are liable to be set aside. He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

Having heard the learned counsel for the appellant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below. The appeal is without any merit,

which is liable to be dismissed, for the following more than one reasons.

A bare reading of the impugned judgments and decrees passed by the learned Courts below would show that each and every relevant aspect of the matter had been examined, considered and appreciated, in the correct perspective in minute detail. It is a matter of record that present appellant-defendant No.1 was claiming his right only through defendants No.2 and 3, meaning thereby, the real contest was between the plaintiffs and defendants No.2 and 3. However, neither defendant No.2 nor defendant No.3 stepped into the witness box in support of defendant No.1-appellant, to say at least this much that defendant No.1 was occupying the suit property on their behalf. Once the case pleaded by defendant No.1-appellant was not supported even by his co-defendants, particularly when the entire case of defendant No.1-appellant was that he was claiming to have occupied the suit property through defendants No.2 and 3, he had no legs of his own to stand.

On the other hand, plaintiffs have duly proved their case, by leading documentary as well as oral evidence. Appellant does not claim his own title qua the suit property. Having said that, this Court feels no hesitation to conclude that the learned Courts below have committed no error of law, while passing the impugned judgments and decrees, which have been found based on cogent findings duly supported by sound reasons, therefore, the impugned judgments and decrees deserve to be upheld.

So far as the identity of the suit property is concerned, it has been duly established on record. In fact, defendant No.1-appellant was himself not confident about his own stand taken before the Court. He has been found contradicting himself, while changing the stand to his suitability, which has completely exposed him. It was rightly held by the learned trial Court in para 24

of its impugned judgment that in his written statement as well as in his affidavit Ex.DW1/A, while leading his evidence, defendant No.1-appellant stated that defendants No.2 and 3 were owners of the suit property and it was being held by defendant No.1-appellant herein, on behalf of defendants No.2 and 3.

However, during his cross-examination, appellant-defendant No.1 stated that he was the owner of the suit property but he failed to bring on record any document of title. In this view of the peculiar fact situation obtaining on record of the present case, it can be safely concluded that since the case of the appellant-defendant No.1 was full of contradiction, he was rightly non-suited by both the learned Courts below, thus, the impugned judgments and decrees deserve to be upheld, for this reason also.

Coming to the judgment relied upon by learned counsel for the appellant, there is no dispute about the law laid down therein. However, the cited judgment has not been found of any help to the appellant, being distinguishable on facts. In the present case, since the title of the plaintiffs was never in doubt or under cloud at any point of time, their suit in the present form was very much maintainable. The fact situation was entirely different in the cited judgment.

Further, it is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008**

(2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu

Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context.

These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or

judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to the peculiar facts and circumstances of the case in

hand, it is unhesitatingly held that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees, which deserve to be upheld. During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments and decrees. He also could not point out any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal, having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

13.02.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No